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RUEHBR/AMEMBASSY BRASILIA 6076
RUEHB/AMEMBASSY BUENOS AIRES 1765
RUEHLP/AMEMBASSY LA PAZ 2804
RUEHPE/AMEMBASSY LIMA 1081
RUEHSP/AMEMBASSY PORT OF SPAIN 3613
RUEHQ/AMEMBASSY QUITO 2895
RUEHSG/AMEMBASSY SANTIAGO 4079
RUEHDG/AMEMBASSY SANTO DOMINGO 0600
RUCPDOC/DEPT OF COMMERCE
RHEHAAA/WHITEHOUSE WASHDC
RHEBAAA/DEPT OF ENERGY
RUEATRS/DEPT OF TREASURY

C O N F I D E N T I A L SECTION 01 OF 02 CARACAS 001246

SIPDIS

ENERGY FOR CDAY AND ALOCKWOOD
NSC FOR JSHRIER

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TAGS: EPET ENRG EINV ECON VE
SUBJECT: VENEZUELA: CONOCOPHILLIPS NEGOTIATIONS STALL

REF: CARACAS 1100

Classified By: Economic Counselor Darnall Steuart for reason 1.4 (d)

¶1. (C) SUMMARY: ConocoPhillips Latin America President Roy Lyons met with EconCouns September 5 to report that, following a September 4 meeting with the Venezuelan Government (BRV) negotiating team, negotiations on compensation for its expropriated assets in Venezuela have broken down and no future meeting dates have been set. The Venezuelan negotiating team returned to their original position that the BRV will only pay book value for the assets. The first meeting of the ICSID arbitration tribunal panel will take place on September 13 and Lyons believes his company will submit its formal claim shortly thereafter. He speculates that the BRV will now wait to see that claim. Lyons believes Venezuela plans to file a motion questioning ICSID jurisdiction and that it will take up to a year for the panel to rule. This year delay would give the BRV time to take CITGO to the market for a price quote. In closing, Lyons noted that ConocoPhillips believes that CITGO continued to operate its Lake Charles refinery through Hurricane Gustav. End Summary.

¶2. (C) ConocoPhillips Latin American President Lyons met on September 4 with PDVSA Vice President Eulogio Del Pino, Venezuelan Representative to OPEC Bernard Mommer (previously Energy Vice Minister), and CITGO board member Juan Carlos Boue. The Venezuelan negotiating team informed him that Venezuela will only pay book value for the expropriated assets. Since the beginning of their negotiations, said Lyons, the two sides had agreed on a number of items as the basis for their discussions including use of the business plans for the ConocoPhillips assets (production forecasts, operating expenses, and capital investment). They had discussed using third party oil price forecasts and an average 8-9 percent discount factor which, according to Lyons, is standard for international upstream projects. Essentially, he said, through the negotiations the BRV had moved away from their original position that they would only pay book value and agreed to the use of a net present value calculation for the market value of the assets as stipulated in Venezuela's investment law and the Dutch Bilateral Investment Treaty which covered ConocoPhillips' investments

in Venezuela. There was still a gap between the two sides but ConocoPhillips hoped it could be surmounted by direct negotiations between the company Chairman and Energy Minister Ramirez. As noted reftel, the two sides had also discussed doing a swap for CITGO assets in the United States which Lyons explained were potentially of greater value to ConocoPhillips than the BRV; Venezuela removed that possibility in the August 4 negotiating meeting. In sum, the BRV has now walked away from discussion of an asset swap and also rejected a "net present value" calculation. Lyons said ConocoPhillips was "disappointed but not surprised" by Venezuela's posture in the September 4 meeting.

ICSID ARBITRATION TO BEGIN

¶13. (C) Lyons reported that the first meeting of the ICSID arbitration tribunal panel will take place on September 13. He believes his company will submit its formal claim shortly thereafter, although this will ultimately be decided by his Chairman. Lyons speculated that the BRV is now waiting to see that claim. It would then have six months to respond to the claim. In addition, Lyons believes Venezuela plans to file a motion before the panel questioning ICSID jurisdiction. According to Lyons, the original contracts for the Petrozuata and Hamaca Strategic Associations included clauses stipulating that, if the fiscal terms of the contracts were changed by the BRV, PDVSA would cover the losses of the investor up to a certain point. The maximum

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oil price named in the clause is much lower than current world oil prices which would be cited by ConocoPhillips in its claim to the ICSID panel. The heart of the BRV legal strategy, according to Lyons, is its belief that ICSID's jurisdiction will be thrown out. Lyons noted however, that ConocoPhillips has filed its claims against the Government of Venezuela and not PDVSA. The company has consulted with two major international law firms which both confirmed their belief that there was a greater than 95 percent possibility that ConocoPhillips would prevail on this legal point. The year delay before the likely panel ruling would, however, give the BRV time to take CITGO to the market for a price quote.

LAKE CHARLES REFINERY OPERATED DURING GUSTAV?

¶14. (C) In closing the meeting, Lyons noted that ConocoPhillips believes CITGO continued to operate the Lake Charles refinery during the recent passage of Hurricane Gustav. For ConocoPhillips, he stressed, safety always come first and any employee has the right to suspend operations if s/he sees an unsafe operation. He noted that ConocoPhillips had shutdown its own refinery operations and pulled out its employees and that his company could not understand why any CITGO employees had agreed to maintain operations.

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